IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 404 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUSUMBEN WIDOW OF RANJITBHAI BHIKHABHAI PATEL (DETENU)

Versus

STATE OF GUJARAT

Appearance:

MR SUNIL C PATEL for the Petitioner.

Mr.A.D. Oza, GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/07/2004

ORAL JUDGEMENT

The petitioner is the daughter of a lady detenue and she has challenged the detention order passed against the detenue by the detaining authority, by its order

dated 16.12.2003 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the order of detention, the detenue was also served with the grounds of detention.

In the grounds of detention, there is a reference regarding six pending criminal cases against the detenue. All these cases are under the Bombay Prohibition Act and it is alleged that the detenue is transporting illicit liquor, which is a country liquor. It is stated in the detention order that even though the liquor is dangerous to public health, the detenue is dealing in the said alleged illegal activity. The authority, after recording the statement of the witnesses, has, ultimately, detained her under preventive detention as a 'bootlegger'.

Mr.Patel, learned Advocate appearing for the petitioner, vehemently submitted that the detenue is a hand to mouth lady and her financial position is extremely weak. It is submitted that she is a victim of circumstances and that she has not, as such, indulged in any bootlegging activity. Mr.Patel submitted that, it cannot be said that she has committed breach of any public order. He further submitted that the names of the witnesses have not been given to the detenue on the ground of claim of privilege under Section 9(2) of PASA. He submitted that it is not a case in which any such privilege could have been claimed. He submitted that neither the names of witnesses were disclosed nor material particulars were furnished so as to enable the detenue to make effective representation before the detaining authority and it has deprived the detenue of her valuable right of making effective representation.

He further submitted that there is a delay of more than 35 days in passing the detention order after the last registered case. Regarding the last point regarding delay in passing the detention order, the learned advocate for the petitioner has relied on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
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> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed

> on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
>
> ... ..."

The point regarding delay in passing the detention order is specifically taken in the petition. However, in the affidavit-in-reply, proper explanation is not given. In a given case, the authority can certainly explain the delay in passing the order of detention. Therefore, in my view, the other contentions advanced by Mr.Patel, regarding the financial position of detenue, etc., are not relevant, and even though the other contentions are not having any merits, on the ground of delay in passing the detention order from the last incident, which is not properly explained by the authorities in the affidavit-in-reply, the order of detention is required to be set aside on the aforesaid ground. Further, this Court has already released the Co-detenue in Spl.C.A.No.397 of 2004.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenue be released forthwith unless she is required in connection with any other case. The Rule is made absolute accordingly.

July 1, 2004 (P.B. Majmudar, J.)

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(apj)